IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date:- 23.11.2004

Coram

The Honourable Mr. Justice V. KANAGARAJ

W.P. No.14329 of 1997
and
W.P.M.P. Nos.22993 & 22995 of 1997

V. Mathiyazhagan ... Petitioner

..Vs..

1. The Superintending Engineer,
   Kancheepuram Electricity
   Distribution circle,
   Kancheepuram.

2. Chief Engineer/Personnel,
   Tamil Nadu Electricity Board,
   800, Anna Salai, Chennai - 2.

3. Tamil Nadu Electricity Board,
   rep. by its Chairman,
   800, Anna Salai,
   Chennai - 600 002. ... Respondents

Petition under Article 226 of The Constitution of India, praying to issue a writ of certiorarified mandamus.

For Petitioner : Mr. C.S. Krishnamoorthy
For Respondents : Mr. V. Radhakrishnan

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O R D E R

The above writ petition has been filed praying to issue a writ of certiorarified mandamus, to call for the records of the third respondent in BP (FB) No.23 dated 22.7.97 and quash the aforesaid proceedings and consequently forbear the respondents from preparing a fresh panel for the post of Instrument Mechanic Grade I in the office of the first respondent namely the Superintending Engineer, Kancheepuram Electricity Distribution Circle, Kancheepuram.

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2. Today, when the above matter was taken up for consideration, learned counsel for the petitioner would submit that the petitioner has passed S.S.L.C. And I.T.I. in Instrument Mechanic (National Trade Certificate); that he joined as Helper in the respondent-Board on 6.2.1989 and thereupon gradually promoted as "Instrument Mechanic" on 26.6.1996; that the department has called for willingness for 13 posts of Instrument Mechanic Grade I and after getting option, the first respondent has prepared a panel consisting of ten names and selected the petitioner and one S.Sekar as Instrument Mechanic Grade I; that the petitioner was given postings on 21.6.96; that the other eight candidates' names were deleted by the first respondent in his memo dated 19.3.96; that those candidates filed W.P. No.4014 of 1997, which is pending and obtained interim stay in deleting the names from the panel for promotion in W.M.P. No.6660 of 1997; that thereafter, the second respondent has issued Board proceedings No.23 dated 22.7.97, cancelling the entire panel; that the second respondent has passed the impugned order without any notice to the petitioner; that the impugned order was passed after 14 months of promotion; that the petitioner is fully qualified to hold the said post; that as per the T.N.E.B. Regulations, the petitioner is eligible for the post; and hence he would pray that the impugned order has to be set aside and the matter may be remitted back to the Superintending Engineer for fresh consideration as the impugned order is passed without any notice to the petitioner.

3. Per contra, learned counsel appearing for the respondents would submit that as per Regulation 90(a) of the Tamil Nadu Electricity Board Service Regulation, the Board shall have the powers to annul or modify or revise a list of approved candidates for appointment or promotion to any category, class or service prepared by the competent authority; that pursuant to the interim order passed by this Court, the petitioner has been continuing in the post, but in that event, his seniors continue in the lower postings; that by virtue of this order, his seniority will be restored to the original position and his seniority will not be affected; that the impugned order passed is valid in law and hence he would pray for the dismissal of the writ petition.

4. In reply to the above submissions, learned counsel for the petitioner would submit that when stay is in force, the impugned order was passed; that the respondents ought not to have cancelled the panel, when stay is in force; that the principles of natural justice has been violated and hence he would pray for the quashing of the impugned order.

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5.In consideration of the pleadings of the writ petition, having regard to the materials placed on record and upon hearing the learned counsel for both, what could be assessed by this Court is that the petitioner has initiated the above writ proceeding to quash the order of the third respondent made in BP (FB) No.23 dated 22.7.1997, thereby directing the entire penal approved by the Superintending Engineer, Kancheepuram to the post of Instrument Mechanic, Grade – I, be cancelled and further praying to forbear the respondents from preparing a fresh penal for the post of Instrument Mechanic, Grade I in the office of the first respondent.

6. The contention of the petitioner is that the first respondent prepared a penal consisting of ten numbers and selected the petitioner and one S.Sekar as Instrument Mechanic Grade I, giving posting to the petitioner on 21.6.96 deleting the other eight candidates' names as per the first respondent memo dated 19.3.96 and on the writ petition filed by the other candidates 18 in numbers, in W.P.NO.4014 of 1997, and consequent to the order of interim stay granted in WMP.No.6660/07, the second respondent has issued Board proceedings No.23 dated 22.7.97 cancelling the entire panel. Thus after 14 months of promotion the impugned order is passed without issuing any notice. Hence, the writ petition for the prayer extracted supra.

7. In the impugned order dated 22.7.1997, the second respondent, Chief Engineer, neither cited about the interim order passed by this Court in WMP.No.6660 of 1997 nor has it been taken up for discussion by the second respondent authority. But however, when the order of stay has been passed by this Court, the subject matter having been seized by this Court as per WP.No.4014 of 1997, the second respondent has no reason to pass an order of this sort and the very terms of stay meaning staus quo to be maintained, the order of the second respondent could only be construed to have been passed in violation of the stay orders granted by this Court and therefore, the order impugned passed by the second respondent becomes only liable to be quashed as prayed for on the part of the petitioner in the above writ petition. It has also become incumbent on the part of this Court to forbear the respondents from preparing any fresh penal for the post of Instrument Mechanic, Grade I in the office of the first respondent as it has been further prayed for by the petitioner and the same is also ordered accordingly.

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In result, the above writ petition succeeds and the same is allowed in the manner afore-mentioned. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ssa/bg

To
1. The Superintending Engineer,
   Kancheepuram Electricity
   Distribution circle,
   Kancheepuram.

2. Chief Engineer/Personnel,
   Tamil Nadu Electricity Board,
   800, Anna Salai, Chennai - 2.

3. Tamil Nadu Electricity Board,
   rep. by its Chairman,
   800, Anna Salai,
   Chennai - 600 002.

1 cc to Mr. C.S. Krishnamoorthy, Advocate, SR. 50385
1 cc to Mr. V. Radhakrishnan, advocate, SR. 50633

W.P. No.14329 of 1997

PV (CO)
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